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November 8, 1999

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Hon. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.; TWA-325
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: In the Matter of the Application of Bell Atlantic for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York; CC Docket No. 99-295 – Reply

Dear Secretary Salas:

Enclosed please find an original and six copies of the Evaluation of the New York State Public Service Commission of Bell Atlantic-NY's Compliance with Section 271 of the Telecommunications Act of 1996 - Reply. We also sending via Airborne Express our filing on a 3.5 diskette in read-only format.

This filing does not contain proprietary materials. Exhibits 2 and 3 contain analyses based upon information that had been considered proprietary by AT&T and Bell Atlantic-NY in the New York proceeding. Randal S. Milch, Counsel for Bell Atlantic-NY, and Robert D. Mulvee, Counsel for AT&T, have agreed to waive their companies' claim of confidentiality.

Yours very truly,

Penny Rubin per [signature]
Penny Rubin
Managing Attorney

enclosures

cc: Janice Myles
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition of New York Telephone Company)
for Approval of its Statement of Generally)
Available Terms and Conditions Pursuant)
to Section 252 of the Telecommunications)
Act of 1996 and Draft Filing of Petition)
for InterLATA Entry Pursuant to)
Section 271 of the Telecommunications)
Act of 1996)

CC Docket No. 99-295

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EVALUATION OF THE
NEW YORK PUBLIC SERVICE COMMISSION
--REPLY

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DATED: November 8, 1999

EXECUTIVE SUMMARY

In the Evaluation filed October 19, 1999, the New York Public Service (NYPSC) Commission advised the Commission that, following two and a half years of review, testing, and process improvements, Bell Atlantic-NY had met the Checklist requirements of §271(c) of the Telecommunications Act of 1996 (the 1996 Act) in New York State. After review of the other parties' comments, we reiterate that conclusion.¹

The commentators and opponents of entry raise essentially three questions. First, does Bell Atlantic-NY's current level of electronic processing satisfy §271(c)? For the reasons discussed below, the criticisms of Bell Atlantic-NY's electronic flow-through do not demonstrate a failure to meet the Checklist requirement for non-discriminatory access to unbundled network elements. Bell Atlantic-NY has continued to meet increasing CLEC orders and continues to increase its flow-through capability. In fact, Bell Atlantic-NY processed nearly 100,000 unbundled network element platform orders in August and September, which were submitted primarily by two large competitors that have successfully integrated their application-to-application order and pre-order interfaces.

Second, does Bell Atlantic-NY provide unbundled local loops in compliance with §271(c)? The evidence does not warrant a finding that Bell Atlantic-NY is discriminating in

¹ The United States Department of Justice (DOJ) has made an important contribution to this proceeding and we look forward to continued collaboration.

providing access to loops.¹ NYPSC Staff's analysis refutes AT&T's charge that defective hot cuts are causing substantial numbers of prolonged customer outages. NYPSC's order-by-order review of AT&T's documentation reveals that many of its claimed problems relate to loops that were accepted by AT&T as working, and on which troubles later were found that resemble the types of troubles experienced by Bell Atlantic-NY's own retail customers. Furthermore, our Staff's reconciliation of the AT&T and Bell Atlantic-NY hot cut performance data regarding on-time provisioning for July and August establishes that Bell Atlantic-NY's claims regarding on-time provisioning are more accurate than AT&T's, with on-time performance over 90% industry-wide.

Bell Atlantic-NY's performance in providing xDSL compatible loops must be improved, but improvements are being made. Bell Atlantic-NY has implemented a cooperative testing procedure, developed in cooperation with xDSL providers in the NYPSC's DSL collaborative. Preliminary data suggest that as that procedure is followed, performance improves. Further, the collaborative being facilitated by the NYPSC continues to refine provisioning processes and address remaining xDSL issues.

The final question raised is, does Bell Atlantic-NY's failure to meet each and every Performance Assurance Plan¹ standard evidence non-compliance with the Checklist? Those arguments made regarding the Performance Assurance Plan fail to recognize that the plan, as modified, will ensure a level of service quality beyond what is statutorily required for long distance entry. As we stressed in our Evaluation, the plan is not intended to define the level of

¹ While there have been concerns raised about BA-NY's dropping of directory listings when transferring customers to competitors via loop hot cuts, the company has in place an adequate quality assurance process, and we are requiring immediate restoration of dropped listings.

service required to meet the competitive checklist, or to bridge an alleged gap between Bell Atlantic-NY's current level of performance and the level required to meet the Checklist requirement. Therefore, criticisms of Bell Atlantic-NY's performance under the plan have little bearing on Checklist compliance.

The record contains substantial proof that each Checklist item is being met, that Bell Atlantic-NY's systems are adequately handling the sharp increases in demand brought about by the introduction of mass-market competition, and that Bell Atlantic-NY's loop performance is adequate.

Based on that proof, we recommend the Commission verify that Bell Atlantic-NY has met the Checklist requirements.

¹ Our discussion of the Performance Assurance Plan (PAP) is contained in the Appendix, at Exhibit 7.

BELL ATLANTIC-NY COMPLIANCE WITH §271(c)(2)(B)—
THE COMPETITIVE CHECKLIST

Checklist Item (i)--Interconnection in Accordance with the Requirements
of §§251(c)(2) and 252(d)(1)

A. Trunking

1. Comments

In our evaluation, we concluded that Bell Atlantic-NY is in compliance with checklist item (i) because it is providing interconnection at all technically feasible points and it is providing trunking, at least equal in quality to what it provides itself, at reasonable and non-discriminatory rates. Further, we found that Bell Atlantic-NY had increased the availability of trunk installations to alleviate blocking and that the metrics indicated that there were virtually no failures for July and August.¹

Several parties, including Prism, Allegiance, ALTS and CompTel, contend that Bell Atlantic-NY provisions interconnection trunks beyond the committed due date.² e.spire states that delay it experienced on account of trunks provisioned beyond the due date was exacerbated by Bell Atlantic-NY's initial failure to accept trunk orders until the necessary DS-3 circuits were first provisioned.³ Teligent states that Bell Atlantic-NY can construe the metric in ways that purportedly show it to be in compliance when, in fact, Bell Atlantic-NY has caused additional delays by requesting further due date postponements (supplements, or "supps") of Access Service Requests (ASR). According to Teligent, Bell Atlantic-NY issues a Firm Order Commitment (FOC), which triggers the metric, only after it receives a clean ASR. The delays

¹ NYPSC Evaluation, p. 19.

² Allegiance, p. 11; Prism p. 23; ALTS pp. 44-45, CompTel, p. 20.

³ e.spire, pp. 16-21.

prior to the issuance of the FOC caused by the supps, posits Teligent, are not reported in the metrics. Teligent also states there were no provisioning intervals for large orders, which can only be filed as “projects” with “negotiated” intervals.¹

Sprint contends that, in its interconnection agreement arbitration, Bell Atlantic-NY has insisted that it establish multiple interconnection points, in accord with Bell Atlantic-NY’s geographically relevant interconnection point (GRIP) proposal. According to Sprint, Bell Atlantic-NY has not demonstrated that Sprint’s more efficient interconnection proposal request is not feasible.²

2. Responses

Teligent’s claim that there are no provisioning intervals for large orders is incorrect; in the NYPSC Carrier-to-Carrier proceeding, the parties agreed that the interval for orders for more than 384 trunks (“projects”) would not exceed 120 days, except in extenuating circumstances. The CLECs and Bell Atlantic-NY also agreed to clarify the term “negotiated interval,” to include a “mutual agreement on a delivery date of requested services . . . based on customer, CLEC and Bell Atlantic-New York requirements.” The NYPSC adopted these understandings and directed Bell Atlantic-NY to reflect them in the carrier guidelines.³

Teligent’s assertion that Bell Atlantic-NY circumvents the New York Performance Standards and Reports for timeliness of FOC issuance by inappropriately rejecting ASRs and requiring CLECs to issue supplemental ASRs does not appear valid. The specifications for submitting ASRs are spelled out in BA-NY’s business rules documentation, and this information

¹ Teligent, pp. 10-13.

² Sprint, pp. 6-7.

³ Case 97-C-0139, Order Establishing Additional Inter-carrier Service Quality Guidelines (issued November 5, 1999).

is readily available to CLECs (“Bell Atlantic Access Service Request Business Rules”).¹ We are not privy to the specific facts and circumstances surrounding the ASRs in question, and expect that BA-NY will address this matter more fully.

Allegiance claims that 65% of all interconnection trunks ordered were delivered late, but that figure includes misses that are caused by Allegiance as well as Bell Atlantic-NY. While the metrics further refine this information to assign responsibility for misses to either Bell Atlantic-NY or the CLEC, Allegiance does not distinguish responsibility for delaying provisioning and does not appear to raise any issue with Bell Atlantic-NY’s assignment of responsibility as reported in the metrics. Our preliminary evaluation suggests that e.spire’s trunks were provided within 16 to 47 business days and Prism’s within one to 27 business days. Since these orders appear to have been “projects” — inasmuch as both parties ordered more than 384 trunks—the interval would have been negotiated. We have been unable to determine the negotiated due dates, and are continuing to examine this issue.

NYPSC has reviewed the information that is available to us concerning the allegations that Bell Atlantic-NY has not timely provisioned interconnection trunks. However, many factors impinge on the provisioning interval in the Product Interval Guide (e.g. the size of the orders, whether the trunk orders were forecasted, or whether these were new trunk groups). While we expect Bell Atlantic-NY to provide additional appropriate information and explanations regarding these allegations, the claims must be viewed in context. Bell Atlantic-NY provides interconnection service to approximately 37 competitive carriers in substantial quantities and, for the most part, without complaint.

¹ If a CLEC believes BA-NY is rejecting ASRs without cause, it should attempt to resolve the matter with the company and may seek our assistance if that approach fails.

With respect to Sprint's claim, this issue and a number of others raised by Sprint are now the subject of an arbitration proceeding under Section 252.¹ It should be noted, however, that the NYPSC, in another context, has rejected the Bell Atlantic-NY GRIPs proposal,² but permitted it to be raised again in the Second Network Elements Proceeding.³

B. Collocation

1. Comments

In our Evaluation, we concluded that Bell Atlantic-NY is provisioning collocation in a timely manner and has adequately addressed collocation quality concerns. We also found that Bell Atlantic-NY is in compliance with the Commission's Advanced Services Order.⁴

Several parties claim that Bell Atlantic-NY's tariff is not in conformance with the Commission's Advanced Services Order, citing construction intervals, the need for a security escort, and 10-foot buffer zone requirements, among other issues.⁵ Network Access Solution (NAS) claims Bell Atlantic-NY harms advanced service competition because, while it delivers collocation cages on time, it fails to provide special billing numbers or carrier facility assignments.⁶ It also claims that Bell Atlantic-NY's tariff has failed to include the full cost of a cageless collocation arrangement.⁷

¹ Case 99-C-1389, Petition of Sprint Communications Company, L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Inter-carrier Agreement with Bell Atlantic-New York.

² Case 99-C-0529, Reexamination of Reciprocal Compensation, Opinion No. 99-10 (issued August 26, 1999), p. 59.

³ Case 98-C-1357, Second Network Elements Proceeding.

⁴ NYPSC Evaluation, p. 24-25.

⁵ DSL. net, pp. 7-8; ALTS, pp. 49-64; and Choice One, pp.10-11; TRA, p. 21.

⁶ NAS, pp. 10-12.

⁷ NAS, pp. 11-12.

@link Networks, Inc. contends it is premature to determine whether Bell Atlantic-NY is providing collocation consistent with the Act. Because the NYPSC ordered Bell Atlantic-NY to amend its tariff on August 31, 1999 to conform with the Commission's Advanced Services Order, @link Networks claims it will take several months, given the tariffed intervals for provisioning, before it can be determined whether Bell Atlantic-NY successfully implemented collocation.¹

2. Responses

On August 31, 1999, the NYPSC directed Bell Atlantic-NY to amend its collocation tariff² in order to comport with the Commission's First Report and Order issued *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*.³ The issues raised by the parties here have been addressed in the NYPSC Collocation Order. Among other things, the NYPSC directed Bell Atlantic-NY to: remove from the tariff the 10-foot space requirement and separate line up limitations (p. 5); provide tours to CLECs after denying requests for physical collocation (p. 6); reduce the installation interval for cageless collocation to 76 business days (p. 10); and provide CLECs with security escorts on the initial visit, but not on subsequent visits, consistent with its practice with third party vendors (p. 12).

Bell Atlantic-NY also stated that it proactively provides service billing numbers to every data CLEC whether or not it so requested.⁴ Finally, with respect to cageless collocation rates,

¹ @link Networks, pp. 5-6.

² Cases 99-C-0715 and 95-C-0657, *Cageless Collocation Open Environment*, Order Directing Tariff Revisions (issued August 31, 1999) (NYPSC Collocation Order), BA-NY Application, Appdx. 1, Vol. 3, Tab 19.

³ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 99-48 (issued March 31, 1999).

⁴ BA-NY Brief, BA-NY Application, Vol. 61, Tab 941, p. 28.

the only placeholder rate in Bell Atlantic-NY's tariff is Cageless Collocation Security. At present, there is no charge. If Bell Atlantic-NY should consider such a charge, it would be subject to the review and approval of the NYPSC.

Also without merit is @link Networks' claim that the amendments to the tariff will materially affect Bell Atlantic-NY's provisioning performance. Bell Atlantic-NY has a sufficient record of provisioning collocation generally. Despite arguments raised here, the record establishes Bell Atlantic-NY has been adequately provisioning collocation, both physical and cageless, in New York. We do not think it is necessary to wait several additional months to demonstrate what Bell Atlantic-NY is, and has been, providing to CLECs.

We will continue to monitor Bell Atlantic-NY's interconnection provisioning to ensure continued compliance; however, we find that the issues raised by the parties here with respect to Checklist item (i) do not preclude a finding that Bell Atlantic-NY is in compliance with this Checklist item.

Checklist Item (ii) – Nondiscriminatory Access to Network Elements

In our Evaluation, we concluded that Bell Atlantic-NY is in compliance with checklist item (ii), including the obligation to provide nondiscriminatory access to its OSS. That conclusion was based on our examination of KPMG's comprehensive testing, CLEC issues raised during NYPSC's extensive investigation, and our analysis of Bell Atlantic-NY's actual commercial performance.

The OSS issues raised by parties in their initial comments are limited. The concerns center on the progress Bell Atlantic-NY has made in enhancing its flow-through rates for mass market orders. Concerns were also raised about the extent to which CLECs are actually able to use important pre-order functions to enable mass market entry, and about Bell Atlantic-NY's ability to manage changes to its OSS. Finally, several parties raised various concerns about specific areas of Bell Atlantic-NY's performance and specific performance measurements.

We address each of the concerns below. As a general matter, it is significant that, notwithstanding the concerns raised, volumes of orders are increasing at a dramatic pace in New York, and Bell Atlantic-NY is handling these volumes in a manner that demonstrates its ability to meet CLEC needs. While Bell Atlantic-NY's systems are not flawless, they are meeting the demand and continuing to improve.

A. Flow-Through

Parties raise concerns regarding Bell Atlantic-NY's level of electronic order processing and assert that higher levels of automation are necessary to satisfactorily meet the commercial volumes anticipated in the future. AT&T asserts, for example, that Bell Atlantic-NY's flow-

through rates demonstrate discriminatory access,¹ and that high levels of manual processing are incompatible with high-volume competition.² MCI WorldCom states that there is an “unacceptable level of manual processing.”³ And while DOJ believes that Bell Atlantic-NY’s manual processing does not appear to be causing serious customer-affecting problems at current volumes, it sees a “significant risk” that problems will develop if volumes increase rapidly and substantially.⁴

While order flow through is one indicator of whether Bell Atlantic-NY can handle high volumes of orders, it is not the only measure of Bell Atlantic-NY’s ability to process orders or to meet significant increases in demand. Bell Atlantic-NY’s ability to handle high volumes of orders should be measured both by the scalability of its processes, and by its demonstrated performance in handling exponential increases in order volumes.

Bell Atlantic-NY’s ability to process orders has kept pace with increases in demand. The fact is that Bell Atlantic-NY confirmed or rejected 97% of all UNE-P orders on time in August.⁵

¹ AT&T Comments, p. 16.

² *Id.*, p. 19, *referencing Ameritech Michigan* order.

³ MCI WorldCom Comments, p. 11.

⁴ Evaluation of the United States Department of Justice, November 1, 1999, (DOJ Evaluation), p. 32.

⁵ Many commentators, including the U.S. Department of Justice, have stressed the need for flow-through to enable mass-market competition via UNE-P. Therefore this discussion is focused on UNE-P orders.

This level of performance approximates that delivered when volumes were significantly lower,¹ and it demonstrates that both the manual and automated processes are scalable.

The KPMG test determined that Bell Atlantic-NY has the ability to flow-through orders, and to do so at very high volumes.² The volumes tested by KPMG are greater than those being handled by Bell Atlantic-NY now and those projected for at least the next several months. This independent verification demonstrates that Bell Atlantic-NY possesses sufficient electronic system capability to handle current demand and meet projected increases in volumes.

Bell Atlantic-NY's metrics, to be sure, do not show the same level of flow-through as did the KPMG test, but the difference was anticipated and is easily explained. The KPMG evaluation was designed to simulate, as well as reasonably possible, a real world environment, but it necessarily remained a laboratory evaluation. For example, KPMG ensured that the LSRs were error-free prior to submission during the volume test and did not submit LSRs on accounts with pending orders, which meant that its flow-through rate was higher than that expected for the CLECs. In the real commercial environment, the flow-through rate is affected by such factors as ordering errors, pending orders, features not intended to flow through, and the market entry learning curve; and one therefore would expect it to be lower.³ With CLECs entering the market,

¹ August UNE-P volume was approximately 54,700 orders, while January's was 4,350. BA-NY also confirmed or rejected 77% of the more difficult UNE-Loop orders on time in August (89% in September). This was a significant increase over its performance in June and July, even though fact that loop orders increased by over 240% during that period, to 9,638. Of the 17,549 resale orders placed in August, BA-NY confirmed or rejected 97% of them on time.

² In its volume testing, KPMG found that over 99% of the UNE-Platform, UNE-Loop and Resale transactions that should have flowed through did in fact flow-through. Evaluation of the NYPSC, p. 45, *citing* criteria P7-1, 2 and 3, KPMG Final Report version 2.0 (August 6, 1999), BA-NY Application, Appdx. C, Vols. 60 a-c, Tab 916, p. IV-160.

³ As discussed below, the NYPSC metrics are being refined to account for these factors and provide a more accurate picture of Bell Atlantic-NY's flow-through capability.

they are hiring and training new employees and learning how to interpret the OSS business rules as they go, and with Bell Atlantic-NY refining and clarifying its business rules, the flow-through will suffer.

Recent performance results also demonstrate that Bell Atlantic-NY has the capability to handle real-world increases in volume. During the first eight months of this year alone, UNE-P orders have increased twelve-fold.¹ Despite this very large increase, Bell Atlantic-NY achieved a 70% improvement in its UNE-P order flow-through, to the point that two-thirds of all UNE-P orders flowed through in August.² In addition, there has been a marked improvement in Bell Atlantic-NY's flow-through achieved, which was 70% in September for all UNEs. These simultaneous increases in volume and in flow-through demonstrate that Bell Atlantic-NY's systems are scalable and that flow-through levels can improve even as demand increases sharply. This is demonstrated graphically in NYPSC Exhibit 1.

Furthermore, Bell Atlantic-NY has undertaken to achieve further flow-through improvements.³ AT&T, which acknowledges that Bell Atlantic-NY has committed to improve its flow-through and does not criticize the commitments or their timetable,⁴ nevertheless, labels such commitments "paper promises," and argues that the perceived need for them precludes

¹ August UNE-P volume was approximately 54,700 orders, while January's was 4,350.

² The 67% UNE-P flow-through figure is based on completed orders and is therefore different from DOJ's figure of 59%.

³ BA-NY Joint October 8, 1999 Reply Affidavit of Messrs. Miller, Sullivan and Zanzini. (BA-NY Joint October Affidavit)

⁴ AT&T Comments, p. 18.

approval of the application.¹ We disagree, for the dynamic nature of electronic and human processes means upgrades and changes will be continual.²

In the final analysis, Bell Atlantic-NY's performance during the KPMG test and in the real-world demonstrates that it has met the OSS requirements that are part of 271©(2)(B)(ii), yet we fully expect Bell Atlantic-NY will continue to improve its order flow-through. These performance improvements should be welcomed by competitors, as they have been by MCI WorldCom,³ and Bell Atlantic-NY's undertaking to achieve them should not be mischaracterized as evidence of non-compliance. Bell Atlantic-NY's flow-through performance will continue to evolve and improve, promoted by continued regulatory oversight, Bell Atlantic-NY's own corporate self-interest, and significant monetary incentives. We briefly describe some steps taken in this regard.

First, by order issued November 5, 1999, the NYPSC has refined the flow-through metrics and changed the way Bell Atlantic-NY captures and reports its flow-through performance.⁴ The Order adopts the Bell Atlantic-NY flow-through improvements set forth in the company's October 8, 1999 Joint Affidavit⁵ and sets a deadline of May 1, 2000 for

¹ Id.

² Further, arguments that the NYPSC's positive evaluation ignores needed performance improvements either relate to ongoing, routine, scalability adjustments or do not fully take into account the mutuality of the tasks required of both Bell Atlantic-NY and CLECs (See DOJ Evaluation, p. 37, n.100). The development of electronic interfaces and work force protocols has required and will require coordination, trial, error, correction, training, retesting, and market implementation for the foreseeable future.

³ "MCI WorldCom welcomes these commitments." MCI WorldCom Comments, p. 11.

⁴ Case 97-C-0139, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Service Quality Order, (issued November 5, 1999).

⁵ BA-NY Joint October Affidavit.

completion of the third and final phase of those upgrades.¹ These improvements include the implementation of additional flow-through capability for certain types of orders and order characteristics (e.g., orders on accounts that had been blocked), and more precise rejection of orders containing CLEC errors. Bell Atlantic-NY is also establishing workshops to reduce the number of errors in CLEC LSRs. In addition, Bell Atlantic-NY has been ordered to modify its measurement practices, to ensure that its measurement of flow-through achieved accurately portrays its performance.² These improvements will enable Bell Atlantic-NY to scale its operations and continue to improve performance.

Next, at its October 27, 1999 session, the NYPSC ordered the implementation of Bell Atlantic-NY's Performance Assurance Plan (PAP or Plan).³ Significantly, the plan establishes \$10 million flow-through incentive, to ensure improvement and continued performance thereafter.⁴ Pursuant to this incentive, Bell Atlantic-NY in each quarter must flow through four out of every five orders, or 95% of competitors' orders that are designed to flow through (as determined by the PSC), or refund \$2.5 million to its wholesale customers. In fact, \$2.5 million in price reductions will be due on the day that Bell Atlantic enters the long distance market unless it reaches that level during the three months prior to entry.

¹ NYPSC Service Quality Order, p. 8. All but one of the phase I changes have already been made, while phase II changes are to be made by the end of the year.

² As set forth in our Evaluation, two measures have been established to gauge Bell Atlantic-NY's flow-through performance: percent of overall flow-through, which includes orders not expected to flow-through, and percent of flow-through achieved, which measures only those types of orders designed to flow-through. NYPSC Evaluation, pp. 45-46.

³ Cases 97-C-0271 and 99-C-0949, Order Adopting the Amended Performance Assurance Plan and Amended Change Control Assurance Plan (issued November 4, 1999).

⁴ The flow-through achieved metric is also a component of the Mode of Entry part of the Plan and therefore additional dollars are at stake.

Finally, Bell Atlantic-NY's own corporate interest provides a tremendous incentive to increase its level of flow-through, since automated flow-through obviates the hiring and training of additional personnel to manually process orders. If Bell Atlantic-NY does not increase flow-through or provide for effective manual intervention, it will be subject to market adjustments of up to \$269 million under the PAP, in addition to all of the other remedies available to the NYPSC to ensure that the company is adequately serving its wholesale customers,¹ and to the negative public exposure any of these measures entail.

In sum, Bell Atlantic-NY has demonstrated, in both a test environment and through commercial operation, its ability to satisfactorily process orders. Significant increases in demand have confirmed KPMG's conclusion that Bell Atlantic-NY's automated and manual processes are scalable. In addition, the NYPSC has put into place processes to ensure that Bell Atlantic-NY's positive performance trend will continue, even as volumes increase. None of the comments submitted by other parties undermines these conclusions.

B. Pre-Ordering

In our Evaluation, we noted that MCI WorldCom and AT&T have been able to integrate Customer Service Record (CSR) and Address Validation pre-order functionality.² AT&T acknowledges that it has deployed its CORBA pre-ordering interface for commercial production for two pre-ordering functions,³ and MCI WorldCom states that in September 1999, it was able

¹ The Commission can reallocate, on 15-day's notice, all of the financial incentives in Bell Atlantic's Performance Assurance Plan to any particular problem areas and can also institute penalty actions or resort to other remedial measures, including dividend restrictions, if Bell Atlantic-NY's service becomes problematic.

² NYPSC Evaluation, p. 48.

³ AT&T Comments, p. 26.

to move a parsed CSR subfunction into production.¹ Nevertheless, MCI WorldCom seems to suggest that a critical subfunction of its application-to-application address validation pre-order is no longer available.² After discussions with MCI WorldCom and Bell Atlantic-NY, NYDPS concluded this function, though not essential, is useful. MCI WorldCom and Bell Atlantic-NY have agreed it will be restored, and NYDPS will monitor and intervene if necessary.

While AT&T claims that Bell Atlantic-NY has not shown that it has provided CLECs a fully functional fielded customer service record (CSR),³ MCI WorldCom states that it moved the parsed CSR function into production in September, 1999.⁴ MCI WorldCom is experiencing longer intervals for parsed CSRs than are Bell Atlantic-NY's retail representatives, but the NYPSC recently established parity-plus-ten seconds as the appropriate standard for Bell Atlantic-NY to provide parsed CSR responses.⁵ The parsed CSR response times will be measured according to this new standard and will be included as a part of the pre-order response times under the Performance Assurance Plan. NYDPS has been working with MCI WorldCom and Bell Atlantic-NY to ensure that parsed CSR Responses times remain consistent with these standards.

In sum, Bell Atlantic-NY has provided critical pre-order functionality to enable CLECs to mass market in New York.

¹ MCI WorldCom Comments, p. 28.

² MCI WorldCom Comment, p. 31.

³ AT&T Comments, p. 22.

⁴ MCI WorldCom Comments, p. 28.

⁵ Case 97-C-0139, Service Quality Order, p. 15.

C. Change Control

In our Evaluation, we noted problems with Bell Atlantic-NY change control procedures that KPMG had highlighted. Parties' comments reiterate many of the issues that KPMG recognized, but offer no new arguments. The parties center on the asserted inability of Bell Atlantic-NY to demonstrate that it can comply with its own change control rules.

Sprint, for example, complains that Bell Atlantic-NY has failed to manage software releases adequately, causing Sprint to waste resources by meeting interface specifications that have been superseded.¹ Additionally, Sprint says that Bell Atlantic-NY has ignored CLEC change requests (CR) and that the Change Control process is more unilateral than collaborative.² AT&T complains about the quality of the software releases, suggesting that virtually every release of Bell Atlantic-NY business rules and specifications has been riddled with errors, omissions, and inconsistencies.³ TRA cites Bell Atlantic-NY's failure to distribute timely, consistent documentation as hindering competition.⁴ The Department of Law (DOL), commenting on the timeliness of documentation to CLECs, notes that penalties would result from the CCAP plan using August 1999 data⁵ and suggests the FCC review September 1999 data to determine if Bell Atlantic-NY performance has improved.⁶ Finally, MCI WorldCom states that Bell Atlantic-NY has not demonstrated it can conduct carrier-to-carrier testing with CLECs;

¹ Sprint Comments, p. 18.

² Id., p. 21.

³ AT&T Comments, p. 28.

⁴ TRA Comments, p. 11, n. 38.

⁵ DOL Comments, p. 23.

⁶ Id., p. 26.

and notes that it has not yet had the opportunity to complete a full cycle of testing, including moving the tested software into production.¹

Bell Atlantic-NY's change control process improved substantially with the adoption in May 1998 of the change control procedures. The ability of KPMG and a number of competitors to successfully build application-to-application interfaces provide sufficient evidence that the documentation is commercially adequate. Further, an important feature of Bell Atlantic-NY's change control enhancements—the so-called permanent “September” solution, which provides CLECs a more robust testing environment—was successfully demonstrated in September 1999. Four CLECs used the new 30-day testing environment without any significant problems, and the new release was successfully moved into production on October 16, 1999.²

The concerns raised by the parties have been addressed by Bell Atlantic-NY, and several parties have acknowledged these improvements. For example, while Sprint complains that CLEC change requests have been ignored, MCI WorldCom notes that this had been a problem in the past, but that, with assistance from the NYDPS, a new procedure is now in place to prioritize change requests.³ MCI WorldCom goes on to acknowledge that “there are some new signs that Bell Atlantic-NY is finally trying to address this [change management] problem.”⁴ A similar sentiment is expressed by the New York State Attorney General, who notes that the PAP and

¹ MCI WorldCom Comments, p. 25.

² The test deck was executed in production on October 18, 1999. With one minor exception the results of the production run matched the results of the Quality Assurance run. We have been informed by BA-NY that the one exception, the absence of a billing telephone number (BTN) for a directory listing, has been corrected.

³ MCI WorldCom Comments, p. 22.

⁴ Id., p. 20.

CCAP are “very significant commitments” by Bell Atlantic-NY¹ and that Bell Atlantic-NY has made significant efforts to address change control.² Sprint itself concludes that given proper incentives, Bell Atlantic-NY should be able to clear up this problem in short order.³

As stated in our Evaluation, we are confident that Bell Atlantic-NY can adequately manage its software releases. The change control processes, along with the Change Control Assurance Plan and the escalation process, enable CLECs to build to Bell Atlantic-NY specifications and adapt to changes. Staff will continue to be available to monitor the change control releases as well as the testing environment.

D. Service Measurements

A number of parties complain that Bell Atlantic-NY’s wholesale service measurements are incomplete or not properly defined. AT&T also claims that KPMG did not validate the accuracy of Bell Atlantic-NY’s performance data.¹

To be sure, of the more than 400 service measurements that have been established in the NYPSC carrier-to-carrier service quality proceeding, some remain (and some always may remain) subject to further refinement. It is simply wrong to suggest that there is insufficient data to evaluate Bell Atlantic-NY’s performance. The NYPSC recently resolved a handful of outstanding issues that the parties had been working on to refine measurement definitions and practices, many of which are now part of the Performance Assurance Plan. In its November 1999 Service Quality Order, the NYPSC refined the flow-through definition and the loop hot cut definitions and trouble standards.

¹ DOL Comments, p. 28.

² Id., p. 17

³ Sprint Comments, p. 22

Regarding AT&T's complaint that retail data does not exist for confirmations and rejection notices are lacking, the parties, including AT&T, agreed in the inter-carrier service quality proceeding to absolute standards for these measures in recognition of the differences between wholesale and retail ordering processes. Indeed, in its interconnection agreement, AT&T agreed to utilize absolute standards for timeliness of order confirmation, reject notices, and completion notices. AT&T's complaint regarding jeopardy notices is similarly without merit. Although a standard for timeliness of installation jeopardy notices was established in the inter-carrier service quality proceeding, the parties agreed that reports would not be required for this performance measurement, because it could be tracked by CLECs and reviewed with Bell Atlantic-NY when necessary.

Finally, AT&T's claim that KPMG did not validate the accuracy of Bell Atlantic-NY's performance data is wrong. As we indicated in our initial comments, KPMG did verify the accuracy of Bell Atlantic-NY's metric calculations and reviewed the processes involved in gathering the data that are entered into metric calculation process.² KPMG also verified the reliability of the entire life cycle of a transaction by submitting orders and calculating performance results.

E. Legal Requirements

A number of parties, including the Competitive Telecommunication Association (Comptel) and AT&T, raise federal legal arguments regarding the NYPSC's restrictions on the enhanced extended link (EEL) and the unbundled network elements platform (UNEP).³ These

¹ AT&T Comments, p. 25.

² NYPSC Evaluation, p. 12.

³ AT&T Comments, pp. 49-53; Comptel pp. 10-16.

arguments are based upon their interpretation of Commission's recent press release concerning the UNE Remand Order requirements. Although the FCC UNE Remand Order was released late Friday, November 5, 1999, we have not yet had the opportunity to analyze it. Bell Atlantic-NY stated that it will adjust its UNE-P obligations under the Pre-filing Statement to comply with the FCC's final rules, and the NYPSC has made clear that to the extent FCC rules mandate unrestricted access to EEL combinations at UNE prices, we will reexamine our requirements.¹

¹ BA-NY Application, p. 25.

Checklist Item (iii)--Access to Poles, Ducts, Conduits and Rights of Way

ALTS asserts that Bell Atlantic-NY must make a full evidentiary showing of its compliance with §224, based on ALTS' mistaken belief that the New York Commission has not exercised its authority under §224©(1) (ALTS Brief 45-46). The simple response is that the NYPSC does regulate access utility to poles, conduits and rights-of-way under New York Public Service Law §119-a, and has done so since 1978, as set forth in our initial comments. The 1996 Act Amendments to §224 do not create a regulatory gap between what the New York Commission oversees and what the 1999 Act requires.¹ Therefore, to the extent ALTS seeks reexamination of New York's policies regarding access to utility poles, ducts, and conduits, the Commission should refrain from doing so, pursuant to §224(c).

¹ In response to RCN's concerns, the PSC Evaluation contained a statement provided by BA-NY regarding RCN's use of its own construction crew in Empire City Subway right-of-way (NYPSC Evaluation p. 73), BA-NY has notified us that there are some limitations on RCN and that it will provide a full explanation in its reply.

Checklist Item (iv)--Unbundled Local Loops

Commentors contend that Bell Atlantic-NY discriminates in the provision of unbundled loops using hot cuts.¹ They raise issues concerning the timeliness and quality of Bell Atlantic-NY's hot cut performance, including charges of serious outages. They also raise concerns about the timeliness and accuracy of Bell Atlantic-NY Local Service Request Confirmations (LSRCs) and, finally, Bell Atlantic-NY's ability to provide competitors xDSL-capable loops. These contentions are analyzed below, based on the New York record, the Affidavit of NYDPS Staff member Margaret D. Rubino (Exhibits 2-6), and the attached charts prepared by NYDPS Staff (Exhibit 1).

A. The Timeliness of Bell Atlantic-NY's Provision of Hot Cuts

Competitors assert that Bell Atlantic-NY missed appointments for hot cuts so frequently as to be discriminatory. AT&T asserts that in July and August 1999, one-fifth of hot cuts were not performed on time, including some early cutovers that resulted in customer outages.² AT&T and ALTS also assert that Bell Atlantic-NY routinely fails to perform the agreed procedures that are needed to ensure timely hot cuts—following the so-called hot cut checklist.³

Because of the often dramatic disparity between Bell Atlantic-NY's and AT&T's reported performance results and because of AT&T's substantial investment in and expressed commitment to mass market entry in New York, NYDPS Staff has been engaged in a rolling, continuous reconciliation of AT&T's and Bell Atlantic NY's performance results. This

¹ AT&T Comments, pp. 29-44; *see* DOJ Evaluation, p. 14 .

² AT&T Meek Aff. ¶¶51, 84, 90; AT&T Comments, p. 33.

³ These steps are the due date minus two (DD-2) dialtone check and call, the cutover minus one hour call, and the post-completion call.